

The manufacturing machinery and equipment exemption includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. See 86 Ill. Adm. Code 130.330(c)(6). (This is a PLR.)

August 31, 2005

Dear Xxxx:

This letter is in response to your letter dated May 13, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

ABC would like to request a binding Private Letter Ruling regarding its Sales Tax exemption for its chemical use in the manufacturing industry. I understand that we needed to follow items 1-8 of Section 1200.110(b). They read as follows:

- 1) ABC provides steel cleaning services. All steel that we clean (pickle) is submerged in a series of tanks in the processing area. The chemical that we purchase (Cleaners, Hydrochloric Acid, and Oil) go into these tanks and have direct and immediate change upon the steel. The rust and scale that is on the steel is removed and a protective oil coating is added to keep the steel from rusting before we ship the steel. According to the above-mentioned code these chemicals that remove rust from the surface of metals before plating or finishing in a manufacturing process can qualify for the exemption. I have enclosed a copy of our brochure, our pickling procedure, and plant layout. Our sister company,

XYZ, has already received this determination. We operate the same series of tanks here as they do in CITY. I have attached a copy of that determination letter also.

- 2) ABC has no standing service contracts.
- 3) ABC is not currently under an audit or litigation with the Department nor is one pending. The tax year in question is 2002 and beyond.
- 4) To the best of my knowledge ABC has not previously submitted a request for private ruling.
- 5) According to 86 Illinois Administrative Code, CH.I, SEC. 130.330; 'The exemption includes chemicals acting as catalysts only if they effect a direct and immediate change upon a product being manufactured or assembled for sale or lease'. The chemicals we use cause 'direct and immediate change' upon the steel.
- 6) To the best of my knowledge there are no authorities contrary to this request.
- 7) ABC has given out any trade secrets in this request which have been noted confidential.
- 8) INDIVIDUAL is an owner in this company and also President.

Thank you for your assistance in assigning ABC a private ruling on sales tax exemption for our equipment and chemicals used in our process. Please feel free to contact me with any questions.

#### **DEPARTMENT'S RESPONSE:**

The Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330(a). The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling of a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating or refining which changes some existing material or materials into a material with a different form, use or name. The changes must result from the process in question and be substantial and significant. See 86 Ill. Adm. Code 130.330(b)(2).

The exemption includes chemicals or chemicals acting as catalysts, but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a product being manufactured or assembled for sale or lease. See 86 Ill. Adm. Code 130.330(b)(6). After review of the materials submitted with your request, it is the Department's position, providing all other requirements for the exemption set out in Section 130.330 are met, that the alkaline solutions, hydrochloric acid, and equipment using those solutions, qualify for the exemption based upon their effecting a change upon the steel by removing rust and scale from it.

The oil or rust preventive applied at the end of the process, and the equipment using those products, do not qualify for the exemption because they do not effect a direct change upon the steel. Lubricants are specifically excluded from the exemption under 86 Ill. Adm. Code 130.330(c)(3). The oil or rust preventative remaining on the steel when it is sold as a product may qualify for the resale exemption. The resale exemption would apply to the extent an item is later sold as part of an intentionally produced product or byproduct of manufacturing. The resale exemption would not apply to oil or rust preventative that evaporates or is removed prior to another process such as final painting. Unregistered de-minimis servicemen are considered the users of any tangible personal property transferred to their service customers and cannot claim the resale exemption on such

purchases. The resale exemption would apply provided that ABC is not an unregistered de-minimis serviceman. See 86 Ill. Adm. Code 140.106.

Providing you are a registered serviceman, you may claim the percentage portion of the oil or rust preventative that becomes a component part of the steel that is sold. You may claim this exemption by submitting a blanket percentage use Certificate of Resale to your vendor. The certificate should as accurately as possible state the percentage of your purchases of the oil or rust preventative that are exempt from tax as purchases for resale, and should also as accurately as possible state the remaining purchases that are taxable as purchases for use. See 86 Ill. Adm. Code 130.1405(c)(2).

The factual representations upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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